

**REMARKS**

In the event that this after-final amendment is entered, claims **180-213** are pending in this application. Claims **180, 191, and 203** are independent. We have canceled claims **20-26, 28, 29, 31, 32, 34, 38-43, and 144-179** without prejudice or disclaimer, and have added new claims **180-213**. Claims **1-19, 27, 30, 33, 35-37, and 44-143** were previously canceled without prejudice or disclaimer. Reconsideration and further examination of the application is respectfully requested.

**Summary of Interviews of July 21, 2010 and August 10, 2010 and Other Discussions**

The undersigned spoke with Examiner Graham several times regarding the present application.

During a brief telephone discussion on June 16, 2010, the undersigned tentatively scheduled an interview with the Examiner and Primary Examiner Hani Kazimi for July 21, 2010. During the course of two brief telephone conversations between the undersigned and Examiner Graham on July 15, 2010 and July 19, 2010, the interview date of July 21, 2010 was confirmed.

On July 21, 2010, in a telephone interview, Examiner Graham and Primary Examiner Kazimi and the undersigned discussed the present application, as well as two other pending applications.

The undersigned explained to the Examiners that, notwithstanding any current rejections in the present application and in no way conceding the propriety of any current rejections in the present application, we would like to work with the United States Patent and Trademark Office to find common agreement to move the present application to allowance. Primary Examiner Kazimi in particular requested that the undersigned prepare and file Terminal Disclaimers on behalf of Applicants with respect to the two other pending applications under discussion. The undersigned and the Examiners also generally discussed potential claim language in the present application. No references were discussed. No agreement was reached, but the Examiners agreed to review and consider proposed amendments from the undersigned in the present application and the two other pending applications, notwithstanding the particular stage of prosecution in a particular pending application (e.g., after non-final Office Action, after final Office Action).

To advance prosecution and obtain early issuance of some subject matter this year rather than potentially forgo the issuance of any subject matter at all this year, the Terminal Disclaimers for the present application were provided to the U.S. Patent and Trademark Office as requested on June 23, 2010. On June 26, 2010, in a brief telephone discussion with Examiner Graham, the undersigned explained that Terminal Disclaimers in the present application were filed on June 23, 2010.

On July 27, 2010, in a brief telephone conversation, the undersigned spoke generally with Examiner Graham regarding preparation of a proposed amendment.

Later that day, the undersigned sent an email message to Examiner Graham and Primary Examiner Kazimi explaining that the proposed new claims would be delayed.

On July 29, 2010, the undersigned sent proposed new claims to Examiner Graham and Primary Examiner Kazimi via electronic mail.

In two brief telephone conversations between the undersigned and Examiner Graham on July 30, 2010 and August 3, 2010, another interview with Examiner Graham and Primary Examiner Kazimi was tentatively scheduled for on or about August 10, 2010.

On August 10, 2010, in a second telephone interview, Examiner Graham and Primary Examiner Kazimi and the undersigned discussed the present application, as well as two other pending applications.

During the second telephone interview, the undersigned and the Examiners generally discussed the proposed new claims in the present application. No agreement was reached. The Examiners requested that the undersigned file supplemental amendments in the present application and the two other pending applications. The undersigned agreed to do so in at least one of the two other pending applications, but indicated that the undersigned was hesitant to do so in the present application because the present application is currently under Final Office Action.

Applicant subsequently decided to file the present Reply.

We do not necessarily agree with or acquiesce in any characterization of any claim term or rejection of any claim that the Examiner may have made in any Interview Summary or during the pendency of the present patent application.

The undersigned greatly appreciates Examiner Graham's time and Primary Examiner Kazimi's time in speaking with the undersigned regarding the present application.

Examiner Graham is strongly encouraged to telephone our undersigned representative, **Christopher Agnew, at (857) 413-2050** with any suggestions to advance prosecution and/or to resolve any condition that would impede allowance. Depending on the circumstances and not necessarily for reasons of patentability, we are willing to consider claim amendments and/or claim cancellations if such amendments and/or cancellations will, in our judgment, advance prosecution toward an earlier allowance and/or satisfy our current business objectives.

### **Claim Amendments**

We do not necessarily agree with the propriety of or concede any of the arguments in the Final Office Action dated May 26, 2010 ("Office Action"). Nor do we concede that the Examiner made *prima facie* showings for the rejections in the Office Action.

Nonetheless, to advance prosecution and obtain early issuance of some subject matter this year rather than potentially forgo the issuance of any subject matter at all this year, we have canceled claims **20-26, 28, 29, 31, 32, 34, 38-43, and 144-179** without prejudice or disclaimer, and have added new claims **180-213**. Claims **1-19, 27, 30, 33, 35-37, and 44-143** were previously canceled without prejudice or disclaimer. Reconsideration and further examination of the application is respectfully requested. We respectfully request reconsideration and withdrawal of the rejections.

We reserve the right to file any of the currently or previously canceled claims in, e.g., one or more continuing applications.

### **Claim Rejections - 35 U.S.C. § 103**

In the Office Action, the Examiner rejected earlier pending claims **20-26, 28, 29, 31, 32, 34, 38-43, and 144-179** under 35 U.S.C. § 103(a)<sup>1</sup> as allegedly being unpatentable over Rickard et al., U.S. Patent No. 6,016,483 ("**Rickard I**") in view of Rickard et al., U.S. Patent No. 6,112,189 ("**Rickard II**")<sup>2</sup>.

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<sup>1</sup> The Examiner made a minor error in failing to identify claims 38-43 as pending or as rejected (Office Action, pg. 2), although the Examiner appears to later reject these claims (Office Action, pp. 5-6), while apparently misidentifying claim 41 as claim 40 (Office Action, pg. 5).

<sup>2</sup> The Examiner is believed to have made a minor typographical error in identifying Rickard, et al., U.S. Patent No. 6,112,189 as "Rickard 1 US Patent No. 6,122,189." Office Action at p. 2.

As a threshold matter, we do not necessarily concede that **Rickard I** or **Rickard II** are valid references under 35 U.S.C. § 103(a), as the 35 U.S.C. § 102(e) dates for these references (September 20, 1996 and March 19, 1997, respectively) are after the filing date (March 25, 1996) of the earliest patent application (now issued U.S. Patent No. 5,950,176) in the chain of priority for the present application.<sup>3</sup>

We reserve the right to challenge the “prior art” status of **Rickard I** and/or **Rickard II** at a later time.

Regardless, we do not necessarily agree with or concede any of the arguments in the Office Action regarding, e.g., **Rickard I** and **Rickard II**. Nor do we concede that the Examiner made a *prima facie* showing that the earlier pending claims **1-3, 6, 8-10, 13-15, 18, and 20-22** were unpatentable under 35 U.S.C. § 103(a).

In fact, the Examiner failed to make a *prima facie* showing of obviousness for the earlier pending claims **20-26, 28, 29, 31, 32, 34, 38-43, and 144-179**. In order to establish a *prima facie* case of obviousness of a claimed invention, all of the features of a claim must be taught or suggested by the prior art.

For example, regarding previously pending independent claim **20**, the Examiner cited the following portions of **Rickard I** as allegedly disclosing “receiving, from a remote device, at a computing device at least one order to buy or sell a financial instrument, in which the financial; instrument represents a movie having a plurality of stages of development that comprise at least one pre-release stage and at least one post-release stage” (**Rickard I**: “column 17 lines 45-65 and column 18 lines 1-17, and column 5 lines 45-67 and column 6 lines 1-67 and column 7 lines 1-47 and column 8 lines 6-67 and [sic] column 9 lines 1-67”). Office Action at pg. 2. However, none of these cited portions of **Rickard I** discloses (or suggests) “receiving... at least one order to buy or sell a financial instrument, in which the financial; instrument represents a movie having a plurality of stages of development that comprise at least one pre-release stage and at least one post-release stage” as required by the previously pending claim **20**. For at least this reason, the

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<sup>3</sup> The present application is a continuation of U.S. Application Serial No. 09/465,607, filed December 17, 1999, which is a continuation of U.S. Application Serial No. 09/184,571, filed November 2, 1998, now U.S. Patent No. 6,505,174, which is a continuation-in-part of U.S. Application Serial No. 08/620,906, filed March 25, 1996, now U.S. Patent No. 5,950,176.

Examiner failed to establish a *prima facie* case of obviousness for the previously pending claim **20**.

For at least similar reasons to those for the previously pending independent claim **20**, the Examiner failed to establish a *prima facie* case of obviousness for the previously pending claims **144 and 162** (which each reference “the method of claim 20”).

Nonetheless, to advance prosecution and obtain early issuance of some subject matter this year rather than potentially forgo the issuance of any subject matter at all this year, we have opted to pursue new claims **180-213**, rendering these rejections moot.

In any event, none of the portions of **Rickard I** or **Rickard II** cited by the Examiner in the Office Action discloses or suggests “determining ... an initial price of a financial instrument based at least in part on an estimated revenue for a movie, in which the financial instrument represents the movie;” as required by new independent claim **180**. New independent claims **191 and 203** include similar language that is similarly not disclosed or suggested by the cited portions of **Rickard I** or **Rickard II**.

Reconsideration and further examination of the application is respectfully requested. We respectfully request reconsideration and withdrawal of the rejections.

#### **General Comments on Dependent Claims**

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, we believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. We reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

#### **Conclusion**

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

We believe that the application is in condition for allowance, which action is respectfully requested at the Examiner's earliest convenience.

**Comment Regarding Claim Amendments**

None of the statements below is intended to be an addition to or alteration of the written description of the application as filed. None of the statements below is a statement of what is or is not included in the written description of the application as filed.

In responding to this Office Action, we have made several amendments. We wish to make clear in amending the claims that, unless otherwise noted, "a," "an," or "the" means "one or more" and/or "at least one." For example, "an X" means "one or more X," and/or "at least one X."

**Authorization for Email Communication**

Recognizing that Internet communications are not secure, we hereby authorize the USPTO to communicate with any authorized representative concerning any subject matter of this application by electronic mail. We understand that a copy of these communications will be made of record in the application file.

**General Authorization for All Fees During Pendency of this Application**

For the entire pendency of the application, the Commissioner of Patents is hereby authorized to charge all fees, or credit any overpayment, to our Deposit Account No. 50-3938.

The Examiner is strongly encouraged to telephone our undersigned representative, Christopher Agnew, at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, we petition for any extension of time required to make this response timely and otherwise not present. Kindly charge any additional fee, or credit any surplus due for any reason, to Deposit Account No. 50-3938.

Respectfully submitted,

Dated: August 16, 2010

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